September 6, 2012

To: Oregon Education Investment Board

Cc: Dr. Rudy Crew, Chief Education Officer

From: Tim Nesbitt

Re: Permanent Rules – Achievement Compact Advisory Committees

This is to recommend a modification to the proposed permanent rules that you are considering for adoption at your Sept. 11 meeting.

Background

Your board has rule making authority under SB 909 (2011) and was charged with implementing achievement compacts under SB 1581 (2012).

In March, your board adopted temporary rules in order to implement the provisions of SB 1581 related to achievement compacts. These temporary rules addressed both procedural matters (Division 1 – Procedural Rules, related to rulemaking and fees for public records) and the administration of achievement compacts (Division 100 –Achievement Compacts). They must be made permanent within 180 days, which created a deadline for final action by your board of Sept. 25.

At your June 12 meeting, you approved a process for making the temporary rules permanent with appropriate avenues for public input. You confirmed the appointment of a 21-member advisory committee to provide input in this rule-making process, as required by state law. Also, you approved in concept the provisions needed to advance the next phase of work related to achievement compacts, specifically the achievement compact advisory committees created by SB 1581 for K-12 districts and ESDs, and the authority of the Chief Education Officer.

SB 1581 created two avenues of input to governing boards in the development and implementation of achievement compacts. The first is a generic provision that calls for "open communications" with "parents, teachers or faculty, employees, exclusive bargaining representatives and community representatives" (Section 14(5)). The second, specific to K-12 districts and ESDs, calls for the creation of achievement compact advisory committees consisting of "teachers, administrators and other appropriate education personnel who are employed by the district" to develop plans and recommendations for achieving and setting a district's outcomes from year to year (Section 16). The legislation also provides for recommendations from statewide associations to the OEIB (Section 18).

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The advisory committee met to consider the fiscal impact of the proposed rules on June 27. It found variable fiscal impacts for school districts, minimal impact for ODE, CCWD and OUS, and no impact on small businesses.

At your July 10 meeting, you voted to modify the language related to achievement compact advisory committees by adding language to Rule 705-010-0070 (Achievement Compact Advisory Committees) in subsection (3) that reads: "It is recommended that these committees also include parents."

Staff held a public hearing on the proposed rules on Aug. 21 and set a deadline of Aug. 31 for receipt of comments. At the close of the comment period, we had received a total of four comments.

Comments Received

The comments received are attached and summarized as follows.

1. Andrea Henderson, representing the Oregon Community College Association, testified that the rationale required for the establishment of option local priorities in achievement compacts in Rule 705-010-0020(2) is too limiting and suggested that meeting community needs be considered as a rationale for setting local priorities for community colleges.

2. Jon Bridges, representing the Beaverton School District, submitted a white paper on behalf of the district and commented that:
    a. State-generated data on achievement compact measures should be distributed to districts within two weeks of the data becoming final (Rule 705-010-0030);
    b. Districts should not be required to set numeric targets in achievement compacts, because of the unpredictability of group sizes from year to year, and that percentages be used instead (Rule 705-010-0035);
    c. OEIB should adhere to SB 1581's requirement to set targets for all students and for disadvantaged students in the aggregate, not for each student group that comprises the aggregate of disadvantaged students, while continuing to report results for each student group that comprises listed in Rule 705-010-0040.

3. The Oregon Education Association requests that you delete the language in Rule 705-010-0070 that you added at the July meeting, which reads: "It is recommended that these committees also include parents," as inconsistent with the intent of SB 1581 and "outside the scope of the OEIB's general regulatory authority because it in effect makes new law."

4. Rep. Michael Dembrow advises that the parental involvement language in Rule 705-010-0070 is inconsistent with the legislative intent of SB 1581 and that Rule 705-010-0045 should offer more guidance about how community colleges and universities are expected to communicate with parents and other community representatives.

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Discussion

All of the points raised in the comments may warrant action in regard to future legislation or the revision of rules for the 2013-14 year and beyond. However, in all but one instance, you have the authority to address and resolve the issues raised by the commenters under the proposed rules in the interim. This authority lies in the board's authority to approve modifications of compacts under Rule 705-010-0050, and the Chief Education Officer's authority to waive timelines and settle disputes relating to achievement compacts in Rule 705-010-0055. Also, as a practical matter, you have not yet received the comments from state associations that are due to you by Sept. 30, and you have yet to address potential changes to the legislation governing achievement compacts that you may wish to submit to the 2013 Legislative Assembly. For these reasons, with the one exception described in the following paragraph, your adoption of the rules as drafted does not preclude resolving the commenter's concerns on an ad hoc basis and addressing all outstanding issues related to the achievement compacts in legislation or new rules for 2013-14 and beyond.

The one exception is the objection to the parental involvement language raised by OEA and Rep. Dembrow. As the person who represented your board in drafting and amending this legislation, I can attest that achievement compact advisory committee was intended to represent an extension of professional learning communities and labor-management committees and that the open communications provision of SB 1581's Section 14(5) was intended to provide for input from parents and other stakeholders in a separate forum. However, as groups that are appointed by and advisory to local school boards, the achievement compact advisory committees are public bodies. Thus, they have elicited the interest of parents and community groups for participation in their deliberations. On the advice of counsel, however, we acknowledge that the participation of parents as member of achievement compact advisory committees was not contemplated in the legislation and may exceed your authority to establish in these rules.

Recommendation

- It is recommended that your Board modify Rule 705-10-0070 with the deleted and added language as follows:

705-010-0070 Achievement Compact Advisory Committees

(1) Each school district, as defined in ORS 332.022, and each education service district operated under ORS Chapter 334 shall form an achievement compact advisory committee no later than September 30, 2012.

(2) An achievement compact advisory committee shall be responsible for ensuring that the district's achievement compact is implemented for the 2012-13 school year and annually thereafter and for ensuring that achievement compacts for subsequent school years are developed with input from educators and staff of the district.

(3) The governing body of a district shall appoint the members of an achievement compact advisory committee. The members shall consist of teachers, administrators and other appropriate

education personnel who are employed by the district. ~~It is recommended that these committees also include parents.~~ It is recommended that parents be consulted and treated as partners in the deliberations of the committee by means of advisory subcommittees, invited testimony or ex officio membership slots. When an employee organization represents educators of a district, the superintendent of the district, at the direction of the governing board of the district, shall collaborate with the local president of the employee organization to recommend the appointment of educators to the achievement compact advisory committee.

(4) An achievement compact advisory committee shall:

(a) Develop plans for achieving the district's outcomes, measures of progress, goals and targets expressed in an achievement compact, including methods of assessing and reporting progress toward the achievement of goals and targets; and

(b) Recommend outcomes, measures of progress, goals and targets to be contained in the district's achievement compact for the next fiscal year.

(5) Each achievement compact advisory committee shall present its recommendations in

a report to the governing board of the district no later than February 1 of each year. An achievement compact advisory committee's report and recommendations shall be considered by the governing board of the district when entering into an achievement compact for the next fiscal year. The governing board shall file the achievement compact advisory committee's report with each achievement compact it adopts and forwards to the Board.

Stat. Auth.: Sections 16-17, chapter 36, Oregon Laws 2012 (Enrolled Senate Bill 1581)
Stats. Implemented: Sections 16-17, chapter 36, Oregon Laws 2012 (Enrolled Senate Bill 1581)

- It is also recommended that your Board consider additional changes to the rules related to achievement compacts for 2013-14 and subsequent years after receipt of the input from statewide associations, further consideration of the comments received in this process, completion of your review of compacts for 2012-13 and finalization of legislation for 2013.

Attachments

- Senate Bill 1581
- Statement of Need and Fiscal Impact
- Proposed Rules, as approved at the 7/10/12 OEIB meeting
- Comments Received

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